

House File 2454 - Introduced

HOUSE FILE _____
BY KAUFMANN, TYMESON, and
GRASSLEY

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to eminent domain authority and condemnation
2 procedures and including effective date and applicability date
3 provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 5685YH 82
6 sc/rj/8

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1 1 Section 1. Section 6A.22, subsection 2, paragraph c,
1 2 subparagraph (1), Code 2007, is amended to read as follows:
1 3 (1) If private property is to be condemned for development
1 4 or creation of a lake, only that number of acres justified as
1 5 reasonable and necessary for a surface drinking water source,
1 6 and not otherwise acquired, may be condemned. ~~In addition~~
1 7 ~~Prior to making a determination that such lake development or~~
1 8 ~~creation is reasonable and necessary,~~ the acquiring agency
1 9 shall ~~conduct a review of~~ demonstrate by clear and convincing
1 10 evidence that no other prudent and feasible alternatives to
1 11 alternative for provision of a drinking water source prior to
1 12 making a determination that such lake development or creation
1 13 is reasonable and necessary exists. Development or creation
1 14 of a lake as a surface drinking water source includes all of
1 15 the following:
1 16 (a) Construction of the dam, including sites for suitable
1 17 borrow material and the auxiliary spillway.
1 18 (b) The water supply pool.
1 19 (c) The sediment pool.
1 20 (d) The flood control pool.
1 21 (e) The floodwater retarding pool.
1 22 (f) The surrounding area upstream of the dam no higher in
1 23 elevation than the top of the dam's elevation.
1 24 (g) The appropriate setback distance required by state or
1 25 federal laws and regulations to protect drinking water supply.
1 26 For purposes of this subparagraph (1), "number of acres
1 27 justified as reasonable and necessary for a surface drinking
1 28 water source" means according to guidelines of the United
1 29 States natural resource conservation service and according to
1 30 analyses of surface drinking water capacity needs conducted by
1 31 one or more registered professional engineers. However, any
1 32 guidelines or analyses related to future water capacity needs
1 33 or water capacity needs in time of drought shall be based on
1 34 the current rate of drinking water usage in the area to be
1 35 served by the surface drinking water source.
2 1 In making determinations required under this subparagraph
2 2 (1), any reviews or analyses conducted by an engineer shall be
2 3 conducted by a registered professional engineer selected by a
2 4 committee of private landowners affected by the proposed
2 5 condemnation action. The acquiring agency shall be
2 6 responsible for paying the fees and expenses of an engineer
2 7 whose services are retained pursuant to this subparagraph (1).
2 8 Sec. 2. Section 6A.24, subsection 3, Code 2007, is amended
2 9 to read as follows:
2 10 3. For any action brought under this section, the burden
2 11 of proof shall be on the acquiring agency to prove by a
2 12 ~~preponderance of the clear and convincing~~ evidence that the
2 13 finding of public use, public purpose, or public improvement
2 14 meets the definition of those terms. If a property owner or a
2 15 contract purchaser of record or a tenant occupying the
2 16 property under a recorded lease prevails in an action brought
2 17 under this section, the acquiring agency shall be required to
2 18 pay the costs, including reasonable attorney fees, of the

2 19 adverse party.

2 20 Sec. 3. Section 6B.54, subsection 10, Code 2007, is
2 21 amended by adding the following new paragraph:

2 22 NEW PARAGRAPH. c. Reasonable attorney fees and reasonable
2 23 costs, including expert witness fees and fees relating to
2 24 appraisal of the property, not to exceed one hundred thousand
2 25 dollars.

2 26 Sec. 4. Section 316.4, subsection 1, Code 2007, is amended
2 27 to read as follows:

2 28 1. If a program or project undertaken by a displacing
2 29 agency will result in the displacement of a person, the
2 30 displacing agency shall make a payment to the displaced
2 31 person, upon proper application as approved by the displacing
2 32 agency, for actual reasonable and necessary expenses incurred
2 33 in moving the person, the person's family, business, farm
2 34 operation, or other personal property subject to rules and
2 35 limits established by the department. The payment may also
3 1 provide for actual direct losses of tangible personal
3 2 property, purchase of substitute personal property, business
3 3 reestablishment expenses, storage expenses, and expenses
3 4 incurred in searching for a replacement business or farm. If
3 5 relocation of a business or farm operation is not economically
3 6 feasible, the displaced person may also apply for payment of
3 7 the loss of existing business relationships because of the
3 8 inability to relocate the business or farm operation to a
3 9 location similar in economic advantage to the location from
3 10 which the business or farm operation was moved.

3 11 Sec. 5. Section 364.4, subsection 1, paragraph a,
3 12 unnumbered paragraph 1, Code 2007, is amended to read as
3 13 follows:

3 14 Acquire, hold, and dispose of property outside the city in
3 15 the same manner as within. However, the power of a city to
3 16 acquire property outside the city does not include the power
3 17 to acquire property outside the city by eminent domain, except
3 18 if viable alternatives do not exist within the city and the
3 19 acquisition of the property is necessary for the following,
3 20 subject to the provisions of chapters 6A and 6B:

3 21 Sec. 6. Section 403.7, subsection 1, unnumbered paragraph
3 22 1, Code 2007, is amended to read as follows:

3 23 A municipality shall have the right to acquire by
3 24 condemnation any interest in real property, including a fee
3 25 simple title thereto, which it may deem necessary for or in
3 26 connection with an urban renewal project under this chapter,
3 27 subject to the limitations on eminent domain authority in
3 28 ~~chapter~~ chapters 6A and 6B. However, a municipality shall not
3 29 condemn agricultural land included within an economic
3 30 development area for any use unless the owner of the
3 31 agricultural land consents to condemnation or unless ~~the~~
3 32 ~~municipality determines that the land is necessary or useful~~
3 33 viable alternatives to the condemnation of agricultural land
3 34 do not exist and the acquisition of the property is necessary

3 35 for any of the following:

4 1 Sec. 7. EFFECTIVE DATE. This Act, being deemed of
4 2 immediate importance, takes effect upon enactment and applies
4 3 to projects or condemnation proceedings pending or commenced
4 4 on or after that date.

EXPLANATION

4 6 This bill makes various changes relating to eminent domain
4 7 authority and the procedure by which eminent domain authority
4 8 is exercised (condemnation).

4 9 The bill provides that, prior to making a determination
4 10 that creation or development of a lake is reasonable and
4 11 necessary, an acquiring agency must demonstrate by clear and
4 12 convincing evidence that no other prudent and feasible
4 13 alternative for provision of a drinking water source exists.
4 14 The bill also provides that when determining the number of
4 15 acres necessary for a surface drinking water source, any
4 16 guidelines or analyses related to future water capacity needs
4 17 or water capacity needs in time of drought shall be based on
4 18 the current rate of drinking water usage in the area to be
4 19 served by the surface drinking water source. The bill further
4 20 provides that the analyses and reviews shall be conducted by a
4 21 registered professional engineer selected by a committee of
4 22 private landowners affected by the proposed condemnation
4 23 action, and the acquiring agency shall pay for the services of
4 24 the engineer.

4 25 The bill changes the standard of proof from a preponderance
4 26 of the evidence to clear and convincing evidence for an action
4 27 brought in district court challenging the exercise of eminent
4 28 domain authority or contesting condemnation proceedings.

4 29 The bill adds reasonable attorney fees and reasonable

4 30 costs, up to \$100,000, to the list of expenses reimbursable by
4 31 an acquiring agency to a property owner.

4 32 The bill provides that if relocation of a business or farm
4 33 operation is not economically feasible, the displaced person
4 34 may apply for payment of the loss of existing business
4 35 relationships because of the inability to relocate the
5 1 business or farm operation to a location similar in economic
5 2 advantage to the location from which the business or farm
5 3 operation was moved.

5 4 The bill adds a condition to the circumstances in which a
5 5 city may condemn land outside the city limits to provide that
5 6 condemnation may occur if viable alternatives do not exist
5 7 within the city and the acquisition of the land is necessary
5 8 for the purposes stated in current law. The bill also amends
5 9 urban renewal law relating to the circumstances in which a
5 10 municipality may condemn agricultural land within an economic
5 11 development urban renewal area to provide that condemnation
5 12 may occur if viable alternatives do not exist and the
5 13 acquisition of the land is necessary for the purposes stated
5 14 in current law.

5 15 The bill takes effect upon enactment and applies to
5 16 projects or condemnation proceedings pending or commenced on
5 17 or after that date.

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